

In The Matter Of Merchant Mariner's Document NO: Z-385032
Issued to: JAMES T. HUDSPETH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

451

JAMES T. HUDSPETH

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 25 May, 1950, an Examiner of the United States Coast Guard at Galveston, Texas, suspended Merchant Mariner's Document No. Z-385032 issued to James T. Hudspeth upon finding him guilty of "misconduct" based upon eleven specifications alleging in substance, that while serving as an acting able seaman on board the American S.S. POTRERO HILLS and while serving as an able seaman on board the American S.S. CERMAK, S.S. WALTON MOORE and S.S. T.J. STEVENSON, under authority of the document above described, between the dates of 1 March, 1946 and 27 April, 1948, he twice failed to join vessels in foreign ports (Nos. 1 and 6); he was absent from his vessel without proper authority on three different occasions (Nos. 4, 11 and 13) and absent from both his vessel and duties at two of these same times (Nos. 4 and 13); he assaulted an official of a foreign government (No. 9) and abused this official with threatening and obscene language (No. 10); he illegally attempted to land cigarettes at a foreign port (No. 8); he refused to obey the order of a superior officer to turn to (No. 7); he possessed firearms without proper authority (No. 2); and he stole and attempted to carry away U.S. Government property (No. 3).

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specifications No. 1, 9, 11 and 12; and "guilty" to specifications No. 2, 3, 4, 6, 7, 8, 10 and 13. The fifth specification was withdrawn by the Investigating Officer.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence certified copies of log entries to prove the allegations contained in specifications No. 1, 9, 11 and 12. He then rested his case.

In defense, Appellant made an opening statement and then testified under oath in his own behalf.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" by plea to specifications No. 2, 3, 4, 6, 7, 8, 10 and 13; "proved" by proof of specifications No. 1, and 9; and "proved" by specification No. 11 being "proved in part." He found specification No. 12 to be "not proved". The Examiner then

entered an order suspending Appellant's Merchant Mariner's Document No. Z-385032, and all other valid licenses, certificates of service and documents held by him, for a period of one year.

From that order, this appeal has been taken, and it is urged that the evidence fails to support the allegation of failure to join (No. 1) because Appellant felt it was necessary to go ashore to mail a letter and there were no sailing orders posted nor was he prohibited from going ashore; that the evidence fails to support the allegation of an assault upon a Customs Clerk of Turkey (No. 9) because the record does not identify this man as an official, he was not identified as such at the time of the assault, and Appellant hit him in defense after being verbally assaulted with foul language by this man; and that the evidence shows Appellant was absent from the vessel and his duties on 20 April, 1948 (No. 11), because he was physically unable to perform his duties and he was entitled to go ashore since he had been excused from his duties by the Master of his ship. Appellant also contends that he is not guilty as alleged in these three specifications because he did not have any intent or knowledge of wrongdoing. In addition, the appeal is a plea for clemency based on the facts that he has committed no offense for over two years, he is now married and has a full realization of his responsibilities, and this suspension will result in considerable hardship since he has not fitted himself for other occupations.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On all dates mentioned herein, Appellant was serving as an acting able seaman or an able seaman on board the specified vessels, under authority of his Merchant Mariner's Document No. Z-385032.

On 1 March, 1946, while serving on board the S.S. CERMAK, Appellant had in his possession an automatic pistol without permission from proper authority. The police reported to the Master of the CERMAK that Appellant had attempted to dispose of the pistol while in a French port, and thereafter the Master found the gun in Appellant's possession and confiscated it.

On 4 March, 1946, while still on the CERMAK, Appellant was arrested ashore in a French port while he had in his possession a bedspread belonging to said vessel. He was unable to give any satisfactory explanation for its being in his possession. On the following day, while the ship was in the port of La Pallice, France, Appellant failed to perform his duties and left the ship without permission of proper authority.

On 21 December, 1946, while serving on the S.S. POTRERO HILLS, Appellant stood the 0400 to 0800 watch at which time the crew was called out to get ready to get underway. Sometime after his watch had been completed, Appellant went ashore, without permission, to mail a letter and remained away from the dock for about an hour and a half. When he returned, the vessel had departed from the port of Farge, Germany, after having waited until 1015 for Appellant to return.

On 6 May, 1947, while serving on the S.S. WALTON MOORE, Appellant failed to join that

vessel before it left the port of Cevitannecchia, Italy. A sailing notice was posted at the gangway approximately twenty-four hours in advance of the sailing time at 1600. At least two members of the crew had seen Appellant in the town and one of them had mentioned that the vessel was ready to sail.

On 5 April, 1948, while Appellant was serving on the S.S. T.J. STEVENSON and said vessel was in the port of Istanbul, Turkey, Appellant was ordered by the Chief Mate to turn to and perform his regular duties but he refused to do so without excuse.

On 11 April, 1948, while the STEVENSON was at Izmir, Turkey, Customs officials apprehended Appellant while he was attempting to smuggle cigarettes ashore on two different occasions. When brought aboard after arrest, Appellant entered into an argument with one of these Turkish Customs officials; abusive threatening and obscene language was exchanged, and Appellant struck this official while the latter was performing his official duties.

On 20 April, 1948, while Appellant was still serving on the STEVENSON, he went ashore and did not perform his regular duties. Although he had been excused by the Master from his duties because of a head injury received ashore the night before, Appellant had not been given permission to go ashore. On the following day, he did not turn to because of this same injury.

On 27 April, 1948, while the STEVENSON was in the port of Genoa, Italy, Appellant again took leave of the ship and his duties. There appears to have been no reasonable explanation for this conduct.

Appellant received a probationary suspension of three months in May, 1945, for creating a disturbance aboard the S.S. CAPE FLORIDA and he was admonished in November, 1945, for sleeping on watch and being AWOL from the S.S. CAPE BARROW. Since January, 1949, he has served consistently without offense on seven different ships.

OPINION

This appeal is based primarily on exceptions to the findings and conclusions concerning the first, ninth and eleventh specifications. Since Appellant pleaded "guilty" to all of the other thirteen specifications, except the twelfth specification which was found "not proved" and the fifth specification which was withdrawn by the Investigating Officer, it will not be necessary to discuss the evidentiary bases on which they were found "proved by plea."

In view of the lenient order imposed by the Examiner and the adequacy of the other eight specifications to justify a suspension of Appellant's document for one year, there is no necessity for any lengthy discussion concerning the merits of the three specifications in question.

Appellant now contends that on 21 December, 1946 (First Specification), he went ashore because he "did not know that the ship was going to sail right away." (R. 9) He testified that he was "gone for about an hour and a half" (R. 11) but there is no evidence to indicate that he received

permission from anyone to leave the ship at all. Even if it is accepted that no sailing orders were posted, Appellant was put on ample notice of departure since "the crew was called out to undock ship" while he was still on watch. (See log entry of S.S. PETRERO HILLS for 21 December, 1946). Despite Appellant's desire not to miss the ship, he did miss it through his own negligent misconduct. Since this reason is not an adequate excuse, he was guilty of failure to join his ship in a foreign port. The implications of such an offense in another country are more serious because of the comparative difficulty of obtaining replacements immediately with the result that the ship may be indefinitely delayed or endangered by sailing shorthanded. It is the duty of the Coast Guard to protect men and ships at sea by discouraging this type of conduct by the imposition of remedial sanctions in order to remove such unnecessary hazards of the sea.

Concerning the eleventh specification, there is a complete absence of any evidence that Appellant was given permission to go ashore. Appellant stated that he went ashore because he had been excused from his duties by the Master and the latter had not told him that he could not go ashore. (R. 10) On cross-examination, Appellant agreed that he should have stayed on the ship and attempted to get himself in shape for work again even though he had been excused from performing his regular duties. (R. 13)

Appellant's own testimony supports the allegations contained in the ninth specification. He testified that he "hit him when he started using foul and abusive language towards me." (R. 12) A verbal attack is not sufficient provocation to justify a physical assault. Whether the man wore a badge or other insignia of his office is of little significance if, in fact, he was a Customs official. And it is stated in the log entry that Appellant "struck one of the Customs Clerks." Whether Appellant had struck a government official or a private citizen, under these conditions, his attack would not have been justified and the fact that it was a government employee aggravated the offense.

CONCLUSION

Despite the leniency of the order imposed by the Examiner, I feel that since the last of these offenses occurred more than two years ago, this is indicative of a considerably improved attitude which alleviates the need for remedial action. Therefore, the order of the Examiner is modified to provide for an outright suspension of six months from 25 May, 1950.

ORDER

The Order of the Examiner, dated 25 May, 1950, as so modified, is AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 24th day of August, 1950.